

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/602,979	TERSTAPPEN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	David A Reifsnyder	1723	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to communication filed on June 34, 2003 and Examiner's Interview of September 26, 2003.
2. ☒ The allowed claim(s) is/are 1-3 and 5-7 (re-numbered as claims 1-3 and 4-6).
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☒ CORRECTED DRAWINGS must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No. \_\_\_\_\_.
  - (b) ☐ including changes required by the proposed drawing correction filed \_\_\_\_\_, which has been approved by the Examiner.
  - (c) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |   |
|---|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892)   | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)          |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 4 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. _____. |
| 5 <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. <u>6/03</u> . | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment                  |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material      | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
|   | 9 <input checked="" type="checkbox"/> Other <i>Election/Restriction</i> .           |

**ELECTION/RESTRICTION DRAWINGS and EXAMINER'S AMENDMENT**

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-3 and 5-7, drawn to methods for collecting and observing magnetically labeled microbiological specimens in a fluid medium, classified in class 210, subclass 695.
- II. Claim 4, drawn to an apparatus for collecting and observing magnetic responsive microscopic entities suspended in a fluid medium, classified in class 204, subclass 664.

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the instantly claimed methods can be practiced with a materially different apparatus such as one which doesn't have the electrical conductor means supported on the transparent wall.

Because Inventions I and II are distinct for the reasons given above, have acquired a separate status in the art as shown by their different classification, and the search required for Inventions I and II is different, restriction for examination purposes as indicated is proper.

During a telephone conversation with Joseph F. Aceto on September 26, 2003 an election was made without traverse to prosecute the invention of Group I, claims 1-3 and 5-7.

Claim 4 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Drawings***

The drawings filed on 6/24/03 are objected to for being clearly informal. In response to this office action, appropriate correction is required.

### ***Examiner's Amendment***

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Joseph F. Aceto on September 26, 2003.

The application has been amended as follows:

***In The Specification***

***One Page 1 of the Specification, the first paragraph entitled Cross-Reference to Related Applications has been amended as follows:***

This is a continuation division of 09/856,672, filed on May 24, 2001, now allowed, which is a 371 of PCT/US99/28231, filed on November 30, 1999, which is a continuation-in-part of U.S. Application No. 09/201,603, filed November 30, 1998, now U.S. Patent No. 6,136,182, which is a continuation-in-part of U.S. Application No. 08/867,009, filed June 2, 1997, now U.S. Patent No. 5,985,853, in which priority is claimed to which claims the benefit of U.S. Provisional Application No. 60/019,282, filed June 7, 1996, and claims the benefit of U.S. Provisional Application No. 60/030,436, filed November 5, 1996. ~~Priority is also claimed herein to U.S. Provisional Application No. 60,110,280, filed November 30, 1998. Each of the aforementioned applications and patents~~ Application No. 09/856,672, now allowed, U.S. Patent No. 6,136,182 and U.S. Patent No. 5,985,853 are all incorporated in full by reference herein.

***In The Claims***

**This listing of claims will replace the prior version, and listing, of claims in the application:**

Claim 1 (currently amended) A method for optically analyzing microbiological specimens suspended in a fluid medium, comprising the steps of:

- a. magnetically labeling the microbiological specimens;
- b. containing the fluid medium in a vessel having a chamber therein for receiving the fluid medium, and having a transparent top member;
- c. positioning the vessel into a magnetic field having a substantially uniform region of vertically-directed magnetic gradient, such that the chamber is located in the uniform region;
- d. collecting a uniformly-distributed layer of the magnetically labeled microbiological specimens on the interior surface of the chamber bounded by the transparent member; and
- e. conducting optical analysis of the magnetically- labeled microbiological specimens while maintaining the magnetically-labeled microbiological specimens collected on the interior surface of the chamber bounded by the transparent member.

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Claim 2 (currently amended) The method of claim 1, wherein the step of the positioning the vessel comprises positioning the vessel in a gap between a pair of magnets having respective tapered surfaces facing the gap, and wherein the step of conducting optical analysis comprises microscopic observation of the magnetically-labeled microbiological specimens along an observation path extending vertically into the gap between the magnets and into the chamber.

Claim 3 (currently amended) The method of claim 1, comprising the step of providing for adhesion between the magnetically-labeled microbiological specimens and the interior surface of the chamber bounded by the transparent member, in order to inhibit horizontal movement of the magnetically-labeled microbiological specimens collected thereon.

Claim 4 (canceled)

Claim 5 (currently amended) A method of collecting and observing microbiological specimens in a fluid medium, comprising:

- a. magnetically labeling the specimens by contacting the specimens with a plurality of magnetic labeling particles;
- b. placing the fluid medium into a vessel having a chamber with a transparent surface and a porous wall;

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- c. applying a magnetic field gradient to the chamber to remove the excess magnetic labeling particles through the porous wall of the chamber while retaining the magnetically labeled specimens; and
- d. attracting the magnetically labeled specimens toward the transparent wall for observation after removal of the excess magnetic labeling particles.

Claim 6 (currently amended) A method for optically analyzing microbiological specimens suspended in a fluid medium, comprising the steps of:

- a. magnetically labeling the microbiological specimens;
- b. containing the fluid medium in a vessel having a chamber therein for receiving the fluid medium, a transparent top member, and the chamber having two collection regions of differing heights;
- c. positioning the vessel into a magnetic field having a substantially uniform region of vertically directed magnetic gradient, such that the chamber is located in the uniform region; and
- d. collecting the magnetically labeled microbiological specimens on respective regions of the interior surface of the transparent top member corresponding to the collection regions of the chamber.

Claim 7 (original) The method of claim 6 comprising the step of providing a barrier between the collection regions of the chamber.

***Reasons for Allowance***

The main reason for the allowance of claims 1-3 is a method for optically analyzing microbiological specimens suspended in a fluid medium, comprising the steps of: magnetically labeling the microbiological specimens; containing the fluid medium in a vessel having a chamber therein for receiving the fluid medium, and having a transparent top member; positioning the vessel into a magnetic field having a substantially uniform region of vertically-directed magnetic gradient, such that the chamber is located in the uniform region; collecting a uniformly-distributed layer of the magnetically labeled microbiological specimens on the interior surface of the chamber bounded by the transparent member; and conducting optical analysis of the magnetically- labeled microbiological specimens while maintaining the magnetically-labeled microbiological specimens collected on the interior surface of the chamber bounded by the transparent member.

The main reason for the allowance of claims 5 is a method of collecting and observing microbiological specimens in a fluid medium, comprising: magnetically labeling the specimens by contacting the specimens with a plurality of magnetic labeling particles; placing the fluid medium into a vessel having a chamber with a transparent surface and a porous wall; applying a magnetic field gradient to the chamber to remove the excess magnetic labeling particles through the porous wall of the chamber while retaining the magnetically labeled specimens; and attracting the magnetically labeled



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specimens toward the transparent wall for observation after removal of the excess magnetic labeling particles.

The main reason for the allowance of claims 6 and 7 is a method for optically analyzing microbiological specimens suspended in a fluid medium, comprising the steps of: magnetically labeling the microbiological specimens; containing the fluid medium in a vessel having a chamber therein for receiving the fluid medium, a transparent top member, and the chamber having two collection regions of differing heights; positioning the vessel into a magnetic field having a substantially uniform region of vertically directed magnetic gradient, such that the chamber is located in the uniform region; and collecting the magnetically labeled microbiological specimens on respective regions of the interior surface of the transparent top member corresponding to the collection regions of the chamber.


Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A Reifsnyder whose telephone number is (703) 308-0456. The examiner can normally be reached on M-F 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda M Walker can be reached on (703) 308-0457. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-3601.

  
David A Reifsnyder  
Primary Examiner  
Art Unit 1723

DAR